

Decision 19-11-006 November 7, 2019

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Michael Coltan,

Complainant,

vs.

Case 18-02-003

Pacific Gas and Electric Company (U39E),

Defendant.

**DECISION REGARDING MR. COLTAN'S CLAIM FOR
ELECTRIC METER FUNCTIONALITY AS A SMART METER
OPT-OUT CUSTOMER, AND ASSOCIATED RELIEF**

Summary

This decision finds Pacific Gas and Electric Company (PG&E) did not violate any Commission rule, order or statute by refusing to interconnect Mr. Coltan's residential solar system. PG&E may, but is not required to, interconnect Mr. Coltan's residential solar system using two digital meters which communicate his interval energy usage data through a manual download, for the same charges Opt-Out customers incur as set forth in Decision 12-02-014. PG&E is not required to reimburse Mr. Coltan for electricity charges incurred as a result of PG&E's delayed interconnection of Mr. Coltan's residential solar installation, which resulted from Mr. Coltan's failure to accept the three standard meter

options offered to Mr. Coltan as a condition of interconnection. This proceeding is closed.

1. Summary of the Dispute

This dispute involves a disagreement between Michael Coltan (Complainant) and Pacific Gas and Electric Company (PG&E or Defendant) over the metering requirements necessary to interconnect Mr. Coltan's residential solar system in Comptche, California. Mr. Coltan is a Smart Meter Opt-Out customer. He currently has two analog meters on his residential property, one at his house and another at his barn. Mr. Coltan pays a monthly fee of \$10 per meter for a PG&E Meter Reader to visually read the face of the analog meters on his property on a bimonthly basis.

In July 2017, Mr. Coltan installed a solar power system at his residence. The County of Mendocino inspected and approved the solar power system on August 2, 2017. Mr. Coltan submitted an interconnection application to PG&E on August 11, 2017. At the time, PG&E offered Mr. Coltan a choice of three meters: 1) a SmartMeter™, 2) a digital meter than can communicate encrypted data to PG&E's billing system via a public cellular work (Cellular Network Meter) or 3) a digital meter without any type of radio that is connected to PG&E's billing system via an encrypted telephone landline (Landline Meter).

Mr. Coltan refused the installation of the three meters offered by PG&E because he considered all three options "smart" and not conforming to the Commission's Opt-Out requirements. To date, Mr. Coltan's residential solar power system remains unconnected to PG&E's grid and Mr. Coltan continues to use the two analog meters as a PG&E residential Opt-Out customer.

2. Procedural Background

Michael Coltan brought an informal complaint to the California Public Utilities Commission's (Commission) Consumer Affairs Branch (CAB) in 2017. Subsequent to the issuance of CAB's finding in favor of PG&E in a letter October 11, 2017, Mr. Coltan filed the instant case against PG&E, alleging PG&E violated its Net Energy Metering (NEM) 2 tariff, Commission Decisions (D.) 12-02-014 and D.14-01-078 and Public Utilities (Pub. Util.) Code §§ 453, 451, 702 and 2827.1(b)(1) for failing to offer Mr. Coltan a non-digital, non-communicating meter option as an Opt-Out customer and refusing to interconnect Mr. Coltan's solar power system. Mr. Coltan requests the Commission require PG&E to keep his existing interconnection application open pending resolution of this case. Mr. Coltan also requests the Commission order PG&E to install two analog, or non-communicating digital meters as a condition of interconnecting Mr. Coltan's solar power system, and for PG&E personnel to obtain Mr. Coltan's energy use data on a bimonthly basis by inserting an optical probe into the meter, via a standard optical port, and downloading the information onto a handheld device such as a laptop. Mr. Coltan requests the Commission order PG&E to charge Mr. Coltan \$10 per month for each meter on his property as a residential Opt-Out customer. Finally, Mr. Coltan requests PG&E compensate him for the energy costs Mr. Coltan incurred due to PG&E's failure to timely interconnect his residential solar power system.

The Commission issued an Instruction to Answer on February 16, 2018. On March 19, 2018, PG&E filed an Answer to the Complaint. On March 22, 2018, the assigned Administrative Law Judge (ALJ), ALJ Kline, set a prehearing conference (PHC) by ruling. On April 17, 2018, the assigned ALJ held a PHC to

discuss the parties, scope, schedule and other procedural matters. At the PHC, Complainant indicated that it wished to file an amended complaint.

On July 30, 2018, ALJ Kline held a second PHC to discuss the parties, scope, schedule and other procedural matters. On June 20, 2018, Complainant filed an Amended Complaint. On August 10, 2018, PG&E filed an Amended Answer.

The assigned Commissioner issued an Amended Scoping Memo on September 24, 2018. The parties attended a settlement conference on October 2, 2018 and agreed to participate in the Commission's alternative dispute resolution program. After a brief period in the Alternative Dispute Resolution (ADR) program, parties could not reach settlement and the matter was referred back to Judge Kline for adjudication.

Mr. Coltan served Opening Testimony on August 31, 2018. PG&E served Reply Testimony on October 12, 2018. Complainant served rebuttal testimony on November 7, 2018. An evidentiary hearing was held on November 16, 2018. Parties filed Opening Briefs on December 7, 2018 and Reply Briefs on January 4, 2019.

On January 31, 2019, the Commission issued an Order Extending Statutory Deadline, extending the statutory deadline in this proceeding until August 6, 2019.

On March 4, 2019, PG&E filed a Notice of Bankruptcy Filing and Imposition of Automatic Stay of this proceeding. On April 11, 2019, Judge Kline issued a Suspension Notice in this proceeding. Subsequently, the stay was lifted.

All prior rulings are affirmed, and all pending rulings are denied.

3. Jurisdiction and Burden of Proof

The Commission exercises jurisdiction over the activities of public utilities,¹ including electrical corporations.² PG&E is an investor owned utility (IOU) providing electrical service in California. PG&E is a therefore an IOU “subject to our jurisdiction, control and regulation.”³

This proceeding was categorized as adjudicatory pursuant to Rule 7.1(c)⁴ without party objection. Mr. Coltan is an individual who alleges PG&E violated a rule, order, law or tariff. Accordingly, the Commission seeks to determine if PG&E contravened any applicable rule, order or statute pursuant to Rule 4.1(a).

As the complainant, Mr. Coltan bears the burden of proof to show PG&E violated a rule, order, law or tariff approved by the Commission. The complainant must meet the burden of proof by a preponderance of the evidence. To prevail, Mr. Coltan must communicate his allegations against PG&E through pleadings and provide sufficient proof to support all allegations. If Complainant fails to meet the burden of proof, the case must be dismissed.

4. Issues Before the Commission

The purpose of setting forth the issues in the scoping memo is to allow the parties to understand what issues can be addressed and resolved in the proceeding. However, after fact-finding and briefing, it may be determined that some of the issues need not be addressed in order to resolve the complaint.

¹ Pub. Util. Code § 216(a).

² Pub. Util. Code § 218 defines an electrical corporation as every corporation “owning, controlling, operating, or managing any electrical plant.”

³ Pub. Util. Code § 216(b).

⁴ All references to Rule or Rules herein shall refer to the Commission’s Rules of Practice and procedure, unless otherwise indicated.

The issues in this proceeding are as follows:

1. By not offering Complainant (an opt-out customer who chooses to install a renewable energy system) a non-analog, non-communicating meter, did Pacific Gas and Electric Company (PG&E) violate the net energy metering 2 (NEM 2) tariff or resolution E-4273? If so, is PG&E also in violation of Public Utilities (Pub. Util.) Code §§ 702 and 451?
2. By failing to offer Complainant (an opt-out customer who chooses to install a renewable energy system), a non-analog, non-communicating meter, did PG&E violate Pub. Util. Code § 453?
3. Did PG&E violate Pub. Util. Code § 2827.1(b)(1) and D.16-01-044 with regard to the directive that successor net energy metering tariffs must result in growth of customer-sited renewable distributed generation by failing to offer Complainant a non-analog, non-communicating meter, thereby creating a disincentive for customer-sited renewable energy growth?
4. Did PG&E violate D.12-02-014 by declining to offer Complainant, an opt-out customer, use of a non-analog non-communicating meter for use with complainant's residential solar system?
5. Should the Commission order PG&E to keep Complainant's request for interconnection open during the pendency of Complainant's case against PG&E?
6. Should the Commission require PG&E to interconnect Complainant's residential solar system while allowing Complainant to use non-communicating digital meters for the same fee charged to opt-out customers pursuant to D.12-02-014?
7. Should the Commission require PG&E to provide Complainant with a non-communicating digital meter from which data is downloaded to a device by a meter reader based on the language in Special Condition 1 of PG&E's NEM 2 tariff stating that "it shall have the

- option to provide an estimation methodology” for metering customer’s import and export electrical usage?
8. Should the Commission order PG&E to provide an estimation methodology for Complainant other than a non-communicating meter if a non-communicating digital meter cannot be located?
 9. Should the Commission order PG&E to reimburse Complainant for electricity charges incurred from Defendant’s failure to interconnect the Complainant’s solar system, starting from the date Complainant’s solar system was approved by the County of Mendocino?

No safety issues were identified by the Commission or proposed by parties.

5. “Non-Communicating” Meters Do Not Communicate with PG&E’s Smart Meter Radio Frequency Networks

Many of Mr. Coltan’s claims rely on the premise that PG&E failed to provide the proper type of meter under its Opt-Out requirements, including Mr. Coltan’s assertion that PG&E violated its NEM 2 tariff, Resolution E-4723, D.12-02-014, D.16-01-044 and Pub. Util. Code §§ 453, 451, 702 and 2827.1(b)(1).

Initially, Mr. Coltan requested either analog meters or non-communicating digital meters at his property. Over the course of the proceeding, Mr. Coltan’s request focused on a non-communicating digital meter such as an MV-90 or GE kV2c model digital meter with all communications ability turned off. Much of the disagreement between the parties stemmed from disparate interpretations of the term “non-communicating,” which we resolve herein by examining PG&E’s Opt-Out tariff requirement.

PG&E’s requirements for Opt-Out customers are governed by its E-SOP tariff, which states, in relevant part, that:

A non-communicating meter will be used to provide electric service for customers who elect this option. For the great majority of customers, these meters will be analog meters. Some residential electric customers will require special non-communicating solid-state digital meters.

For example, these special meters include meters to support electric time-of-use service under Schedules EM-TOU, EML-TOU, E-6, EL 6, E-TOU, EL-TOU, and EV. Customers who choose to participate in this Opt-Out Program and elect service under a time-of-use rate schedule for which they are eligible will be served using a non-communicating solid state digital time-of-use meter.

Mr. Coltan interprets the term “non-communicating” in the E-SOP tariff to mean the meter cannot initiate communications with any outside system, including a landline or a cellular network.⁵ Mr. Coltan argues the cellular communication capability of the Cellular Network Meter and landline communication capability of the Landline Meter offered to him as a NEM 2 Opt-Out customer renders both meters “smart,” and not conforming to PG&E’s Opt-Out requirements under Resolution E-4723 and D.12-02-014.⁶

Mr. Coltan contends the term “non-communicating” requires PG&E to provide Mr. Coltan with a meter which requires a manual download using an optical probe inserted into a standard port to access the meter’s energy use data and download it onto a handheld device such as a tablet. Mr. Coltan does not object to PG&E personnel transmitting the interval energy usage data through a cellular network, subsequent to manually

⁵ Mr. Coltan Opening Brief at 4.

⁶ *Id.* at 4-8.

downloading it from the meter, as he expressed comfort with trained PG&E personnel exercising due care in handling the information.

PG&E, on the other hand, interprets the term “non-communicating” to include digital meters that can communicate through a landline or a cellular network, since “they cannot initiate communication, do not operate on PG&E’s SmartMeter networks, or communicate with appliances within the home.”⁷ PG&E points to D.12-02-014’s consideration of a “wireless smart meter with wired transmission capability” as support for its interpretation of the term “non-communicating.”⁸

This decision reviews the PG&E E-SOP tariff language to determine whether it supports Mr. Coltan’s claim. Tariffs, when published, and filed, are binding and have the force and effect of a statute. Tariffs are interpreted using traditional statutory principles. When interpreting the meaning of tariff language, the Commission looks first to the ordinary, plain meaning of the term.⁹ The interpretation cannot be strained, unnatural or absurd. The plain meaning of the term “non-communicating” suggests the inability to communicate with any system. Interpreting the term plainly is unreasonable in this context, as this would prohibit the meter from communicating energy usage data for billing, which appears to be integral to the purpose of any electrical meter. It also fails to resolve the differing interpretations posed by Mr. Coltan and PG&E, as the term is sufficiently ambiguous to support both interpretations.

⁷ PG&E Opening Brief at 7.

⁸ *Id.* at 8.

⁹ *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.

When there is an ambiguity in the tariff language, the Commission generally construes the tariff language against the drafter, in this case PG&E, and in favor of the customer, in this case Mr. Coltan. However, the Commission's interpretation of an ambiguity against a drafter is not an absolute. If an ambiguity exists, the Commission may rely on sources beyond the plain language of the tariff, such as the regulatory history and other principles of statutory construction, to interpret the tariff. The Commission has the discretion to determine whether an interpretation of a tariff sought by a party is reasonable. Claims of ambiguities "must have a substantial basis and be considered in light of Commission decisions which set forth policy on the matter in dispute."¹⁰ Tariff language must also be construed in context and different provisions relating to the same subject must be harmonized to the extent possible.¹¹

In this case, we look to the language of prior Commission decisions, orders and resolutions on the topic of Smart Meter Opt-Out provisions (as discussed in Resolution E-4723, D.12-02-014 and D.14-12-078) to determine whether the term "non-communicating" can reasonably be interpreted to conform with Mr. Coltan's definition. First, we look to the language of Resolution E-4723, which approved PG&E's E-SOP Tariff. This resolution states in pertinent part, "[w]ith respect to NEM customers, PG&E and [Southern California Edison Company (SCE)] must use a non-analog, non-communicating (*i.e.* non-smart) digital meter."¹²

¹⁰ D.85-10-050 at 15 (emphasis omitted).

¹¹ D.95-07-012 at 30; D.15-06-045 at 24; D.16-01-049 at 13.

¹² Resolution E-4723 at 20.

In looking at the discussion in Resolution E-4723 immediately following the first and only instance of the term “non-communicating (*i.e.* non-smart)” requirement for NEM customers, the resolution contemplates SCE’s use of an Encoder Receiver Transmitter (ERT) meter, which transmits meter data to SCE’s personnel when access to a customer’s property is restricted, as a safe and more convenient “manual meter read” for SCE’s customers.¹³ PG&E’s existing Opt-Out option of transferring energy usage data using a Cellular Network Meter is analogous to SCE’s use of an ERT meter to the extent that both meters communicate a customer’s information over a cellular network. Therefore, the language of Resolution E-4723 does not support Mr. Coltan’s interpretation of the term “non-communicating” as requiring trained PG&E personnel to manually insert an optical probe using a standard port to download interval energy usage data from his digital meters.

The Commission’s Smart Meter Opt-Out options in D.12-02-014 and D.14-12-078 further illuminate our inquiry into the distinction between the terms “smart” versus “non-communicating (*i.e.*, non-smart).” D.12-02-014 explains that SmartMeter™ is the name given to the IOU’s wireless network of meters. PG&E’s electrical SmartMeters™ have two low-power radios capable of transmitting and receiving a signal. One radio communicates with PG&E over its wireless SmartMeter radio network, and the other radio comes turned off and can be turned on if the customer affirmatively decides to implement an integrated Home Area Network (HAN).

In D.14-12-078, the Commission explained that “[t]he Opt-Out program provides an option for residential customers who do not wish to have a wireless

¹³ *Id.* at 21.

SmartMeter.”¹⁴ In D.12-02-014, the Commission considered four Opt-Out options for residential customers,¹⁵ which included the following:¹⁶

1. Analog meter – Under this option, an electromechanical (analog) meter would be used in place of the wireless SmartMeter. This option would require the meter to be read manually every month.
2. Digital meter with no radio installed – Under this option, a digital meter, with no radio communications ability, would be used in place of the wireless SmartMeter. Some of these meters may be able to store interval energy consumption data. This option would require the meter to be read manually every month.
3. SmartMeter with radio transmission turned off – This option would retain the existing SmartMeter, but have the radio communications ability turned off. Under this option, the meter would need to be read manually every month.
4. Wired smart meter – Under this option, interval energy consumption data would be transmitted to the utility through a traditional telephone line, fiber optic, a power line carrier or other wired technologies. Since this option would allow the meter to communicate with the utility, the meters would not need to be read manually every month.

All of the proposed Opt-Out options in D.12-02-014 share the common element of not communicating with PG&E’s wireless SmartMeter network. In reviewing the options presented in D.12-02-014, we note the Commission specifically contemplated a Smart Meter Opt-Out option including a “wired smart meter” such as the Landline Meter PG&E proposes to provide Mr. Coltan as an Opt-Out customer. In D.12-02-014,

¹⁴ D.14-12-078.

¹⁵ D.12-02-014 at 36 (Findings of Fact 1 and 3).

¹⁶ *Id.* at 7-8.

the Commission declined to adopt the “wired smart meter” as an option for Opt-Out customers not because it was “smart,” but because it would require a significant investment in infrastructure and would not be available for use on a large scale in the near future.¹⁷ Therefore, we do not find Mr. Coltan’s interpretation of “non-communicating (*i.e.*, non-smart)” to require a meter which must be read by trained PG&E personnel downloading a meter’s energy usage data by using an optical probe manually inserted into a standard port and downloading the information onto a handheld device consistent with the language or intent of D.12-02-014.

In consideration of D.12-02-014 and Resolution E-4732, this decision finds it reasonable to interpret the term “non-communicating” in PG&E’s E-SOP tariff to mean that the meter does not communicate with PG&E’s wireless SmartMeter system. Accordingly, this decision finds the term “non-communicating” in PG&E’s E-SOP tariff does not require the digital meters provided to Mr. Coltan as a NEM 2 Opt-Out customer to be uploaded by physically connecting an optical probe to the meter by way of a standard port. As Mr. Coltan’s claims (including allegations PG&E violated its NEM 2 tariff, Resolution E-4723, Commission D.12-02-014, D.16-01-044 and Pub. Util. Code §§ 453, 451, 702 and 2827.1(b)(1)) rely on Mr. Coltan’s interpretation of “non-communicating,” this decision denies Mr. Coltan’s requested relief with respect to these alleged violations.

¹⁷ D.12-02-014 at 18; 38 (COL 6).

6. PG&E May, But is Not Required to, Grant Mr. Coltan's Service as Requested

Having determined PG&E offered Mr. Coltan a non-communicating digital meter within the meaning of PG&E's E-SOP tariff, we consider Mr. Coltan's requested relief under PG&E's NEM 2 tariff. Mr. Coltan's position is summarized in Section 6.1. PG&E's position is summarized in Section 6.2. The Commission considers Mr. Coltan's requested relief in Section 6.3.

6.1. Mr. Coltan's Position

Mr. Coltan requests the Commission require PG&E to install two "non-communicating digital meters," such as the MV-90 meter,¹⁸ per Mr. Coltan's preferred interpretation of this term, which involves PG&E personnel manually downloading the interval data collected from the non-communicating digital meters on a bimonthly basis by inserting an optical probe onto a handheld device such as a laptop.¹⁹ According to Mr. Coltan, this download can be accomplished by PG&E personnel holding the title of either a Meter Maintenance Person or an Apprentice Meter Technician.²⁰

Mr. Coltan states his request is consistent with the service offered to NEM 1 customers. Specifically, Mr. Coltan states PG&E offered Ms. Boudreaux (a PG&E customer generator under the NEM 1 tariff) a General Electric (GE) kV2c meter²¹ which PG&E reads bimonthly and charges a standard Opt-Out fee of \$10 per month.²² Mr. Coltan argues the GE kV2c meter may be configured to

¹⁸ MV-90 meters are a class of meters capable of interacting with PG&E's polling software.

¹⁹ Mr. Coltan Opening Brief at 16.

²⁰ *Id.* at 14-15.

²¹ The GE kV2c meter is a type of MV-90 meter.

²² Mr. Coltan Opening Brief at 12, 16-19.

record interval energy use data consistent with the requirements of the NEM 2 tariff.

Mr. Coltan suggests the manual download of Mr. Coltan's digital meters should be free of charge since PG&E dispatches personnel to collect billing data free of charge when other digital meters become defective or cease to properly operate.²³ Acknowledging the \$10 per month fee PG&E's residential Opt-Out customers pay pursuant to D.12-02-014, Mr. Coltan requests the Commission order PG&E to charge Mr. Coltan the same \$10 per month²⁴ charge.²⁵ Mr. Coltan argues that PG&E's proposed bimonthly charge of \$710, for a total of annual charge of \$4,260 as a Special Facility under Electric Rule 2, Section I, is too high.²⁶

6.2. PG&E's Position

According to PG&E, the Cellular Network Meter and the Landline Meter offered to Mr. Coltan as an opt-out customer are both MV-90 meters, and they can collect interval data necessary to provide timely and accurate billing for customer generators under NEM 2.²⁷ PG&E admits to offering Ms. Boudreaux a GE kV2c meter in a non-communicating configuration, but argues Ms. Boudreaux's configuration is permissible under the NEM 1²⁸ tariff but not

²³ *Id.* at 16.

²⁴ PG&E charges \$10 per month for each meter.

²⁵ Mr. Coltan Opening Brief at 17.

²⁶ *Id.* at 19.

²⁷ PG&E Opening Brief at 15.

²⁸ PG&E argues that NEM 1 customers are eligible for a simpler meter configuration since NEM 1 customers do not pay non-bypassable charges for electricity taken from the grid. Thereby, the net energy used may be recorded by reading the face of the digital meter.

the NEM 2 tariff.²⁹ Unlike Ms. Boudreaux's meter, which PG&E states may be read by looking at the face of the meter, reading the face of Mr. Coltan's meter would not provide accurate billing information and there is no accurate estimation methodology for NEM 2 customers at this time.³⁰

Also, PG&E asserts that the two analog meters on Mr. Coltan's property are currently read by either a "Meter Maintenance Person (MMP) or a Routine Meter Person (RMP), which are entry level classifications within the Metering Line of Progression."³¹ PG&E argues that the service requested by Mr. Coltan requires a Metering Systems Technician, a more highly trained classification.³² PG&E asserts that performing the manual download in the remote area impacts PG&E's ability to serve other customers³³ and also comes at an increased cost which PG&E's customers should not have to bear.³⁴

PG&E states that Mr. Coltan may have his requested service³⁵ as a special billing service based on actual usage and generation as governed by Electric Rule 2, Section I.³⁶ While PG&E argues it has not formally quoted Mr. Coltan a

²⁹ PG&E argues that NEM 2 customers require a digital meter which records the total input and output on the meters, as non-bypassable charges are assessed on energy from the grid used by customers.

³⁰ PG&E Opening Brief at 19.

³¹ *Id.* at 13.

³² PG&E Opening Brief at 13.

³³ Only one Metering Systems Technician works in the geographic area surrounding Comptche, California.

³⁴ PG&E Opening Brief at 13.

³⁵ Mr. Coltan's requested service is a manual download from the digital meter by PG&E personnel on a bimonthly basis.

³⁶ PG&E Opening Brief at 19.

service fee for his requested service, PG&E charges \$710 per meter read for a similar service it offers its Direct Access customers under the E-EUS tariff.³⁷

6.3. Discussion

PG&E's NEM 2 tariff permits, but does not require, PG&E to install a non-communicating digital meter per Mr. Coltan's request. The NEM 2 tariff does not list the make and model of eligible meters. Rather, it requires NEM customers to install meters "with the ability to separately measure the flow of electricity in two directions (imports and exports)."

PG&E's NEM 2 tariff allows that:

If none of the normal metering options available at PG&E's disposal which are necessary to render accurate billing are acceptable to the customer-generator, PG&E shall have the right to refuse interconnection. As an alternative, PG&E shall have the option to provide an estimation methodology for such customers.

Mr. Coltan qualifies to interconnect his residential solar system under the NEM 2 tariff. Since Mr. Coltan's existing analog meters are not suitable to measuring interval energy data, and Mr. Coltan refused to accept one of PG&E's three normal metering options, PG&E may either refuse to interconnect Mr. Coltan's residential solar power system or provide an estimation method at its discretion.

The load aggregation on Mr. Coltan's property is incidental, and does not transform Mr. Coltan's Opt-Out request into a request for a Special Facility pursuant to Electric Rule 2, Section I. PG&E's NEM 2 tariff states:

Customer generators with Load Aggregation Arrangements will need metering on the Generating Account capable of separately measuring imports and exports in a manner

³⁷ *Id.* at 12.

commensurate with the smallest time interval used by PG&E to establish billing determinates for any of the Aggregated Account meters. If a newly installed [Renewable Electrical Generation Facility] can use the existing metering, the metering charges will be based on applicable meter charges in the Generating Account [time-of-use otherwise-applicable metered rate schedule]; if a new meter is requested by the customer for a new service as allowed in Special Condition 3, it must be installed at the customer's expense as a Special Facility using incremental costs, pursuant to Section I, Electric Rule 2.

Electric Rule 2, Section I states:

Special Facilities are (a) facilities requested by an applicant that are in addition to or in substitution for standard facilities which PG&E would normally provide for delivery of service at one point, through one meter, at one voltage class under its tariff schedules, or (b) a pro rata portion of the facilities requested by an applicant, allocated for the sole use of such applicant, which would not normally be allocated for such sole use. Unless otherwise provided by PG&E's filed tariff schedules, special facilities will be installed, owned and maintained or allocated by PG&E as an accommodation to the applicant only if acceptable for operation by PG&E and the reliability of service to PG&E's other customers is not impaired.

Mr. Coltan is a NEM 2 customer with a Load Aggregation arrangement because his account aggregates the load at two locations, the house and the barn. Therefore, PG&E may consider Mr. Coltan's application under Special Condition 3 of the NEM 2 tariff, which allows the NEM 2A rate option for load aggregation customers with generation systems producing less than 1 megawatt. Mr. Coltan's existing analog meters are not capable of separately measuring imports and exports. Mr. Coltan's request, however, is unrelated to load aggregation on his property, and it is arguable that Mr. Coltan's request renders

his solar installation a Special Facility. Absent load aggregation, Mr. Coltan's request would be the same.

The Commission has not directly addressed the question of reasonable fees in the instance of NEM 2 Opt-Out customers such as Mr. Coltan. PG&E's comparison of residential and direct access customer charges appears inapt without further justification. Accordingly, if PG&E chooses to offer Mr. Coltan the service he requests, PG&E's charges should be reasonable per Pub. Util. Code § 453, and consistent with charges authorized to other residential Opt-Out customers.

All of the Smart Meter options, with the exception of the wired smart meter option PG&E chose to offer its NEM 2 Opt-Out customers, require a manual meter. The incremental cost increase of a manual download versus an optical read were not litigated as part of this proceeding, and this case is not the forum to assess charges for a customer class. Absent further rulemaking to determine a separate charge for NEM 2 Opt-Out customers, we find it reasonable to charge Mr. Coltan the same \$10 a month per meter charge approved for other PG&E Opt-Out customers.

7. The Commission Lacks Jurisdiction to Award Consequential Damages

The Commission lacks jurisdiction to award damages.³⁸ This decision declines to grant Mr. Coltan's request for recovery of costs incurred for electricity use as a result of PG&E's delayed interconnection of his residential solar system, as this is a request for consequential damages.

³⁸ D.16-04-028.

8. Applicability of Complainant's Request for Relief

Complainant's request to consider whether PG&E's E-SOP or NEM 2 tariffs violate Commission rules, order or statutes are not properly before the Commission. As detailed in the amended Scoping Memo, this case fails to conform to the Commission's requirements in Pub. Util. Code § 1702 and 4.1(b) regarding Commission review of the reasonableness of any utility rates or charges. Specifically, that:

No complaint shall be entertained by the Commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, or telephone corporation, unless it be signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city or city and county within which the alleged violation occurred, or by not less than 25 actual or prospective consumers or purchasers of such gas, electric, water, or telephone service.

In testimony and briefs, Mr. Coltan references nine additional PG&E customers who have indicated that they would not install solar systems if they had to accept a communicating meter.³⁹ None of the referenced customers are parties to the proceeding. None of the customers testified at the evidentiary hearing. The sole purpose of this proceeding is to assess Mr. Coltan's claim for interconnection of his residential solar system pursuant to Rule 4.1(a). Thus, Complainant's request for Commission review of claims beyond PG&E's compliance with its applicable tariffs, or Commission review of PG&E's violations of Commission rules, orders or tariffs beyond Mr. Coltan's individual claim is not properly the subject of this proceeding.

³⁹ Mr. Coltan Opening Brief at 24, Exhibit COL-09 to 11.

9. Appeal of Presiding Officer's Decision

The presiding officer's decision of ALJ Kline in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and an appeal was allowed under Rule 14.4. Mr. Coltan filed an appeal of the presiding officer's decision (Appeal) on September 11, 2019, and no response to the Appeal was filed. His Appeal cites to errors in the presiding officer's decision and in the intervenor compensation rulings.

This Modified Presiding Officer's Decision (MOD-POD) reflects revisions in response to Mr. Coltan's Appeal, as noted throughout. Where the Appeal merely reargues points already made in earlier briefing and provides no basis for finding the presiding officer's decision was unlawful or erroneous, these arguments are not addressed further in this MOD-POD.

The Appeal contends the presiding officer's decision contains the following errors:

- failure to follow the rule regarding settling ambiguities in PG&E's tariff against PG&E;
- failure to seek clarification from the Commission for an ambiguous term rather than creating a new definition of rights and rights;
- conflating the meaning of the terms "non-communicating" and "non-smart";
- finding the integral purpose of electric meters is to communicate rather than to record data usage;
- categorizing an electric bill refund as damages and stating the Commission lacks jurisdiction to award it;
- not make separate findings of fact and conclusions of law on every issue material to the ultimate decision; and
- finding the tariff ambiguous as tariffs have the status of statutes, and cannot be unduly vague or ambiguous.

We have reviewed the Appeal and disagree with Mr. Coltan's assertions that the presiding officer's decision contains factual and legal error, and thus make no modifications to the presiding officer's decision.

The Appeal also alleges the following errors in the ALJ's Intervenor Compensation Rulings, consisting of: 1) the ALJ Ruling denying reconsideration of Mr. Coltan's Notice of Intent (NOI) eligibility request as untimely is legal error; 2) Mr. Coltan is eligible to seek intervenor compensation as a category 1 customer; 3) the intervenor compensation ruling improperly blends category 1 and category 2 customer considerations; 4) the intervenor compensation ruling does not consider cases after *Grinstead* which grant intervenor compensation; 5) the intervenor compensation ruling considers technical procedures not required for Mr. Coltan's claim; and 6) finding Mr. Coltan eligible to seek intervenor compensation will fulfill the legislative intent of the intervenor compensation program.

The purpose of assessing the eligibility of applicants to the intervenor compensation program "is to provide customers with a sense of the likelihood compensation may be awarded."⁴⁰ The Appeal's contention that Mr. Coltan is eligible for intervenor compensation as a category 1 customer fails to distinguish between eligibility for rulemaking and ratesetting cases, and the special conditions the Commission sets for adjudicatory proceedings whereby "a complainant acting solely in an individual capacity and seeking personal remedy is not entitled to claim compensation as an intervenor in a Commission proceeding as provided in Article 5 (§§ 1801-1808) of the Public Utilities Code."⁴¹

⁴⁰ D.98-04-059.

⁴¹ D.98-04-059 at 22, *citing* D.95-10-050 at 4.

Mr. Coltan filed a complaint as an individual PG&E customer. While the Amended Complaint made many broad claims of PG&E's violations, Mr. Coltan's requested relief in the Amended Complaint was for himself, without consideration or reference to relief of other residential Smart Meter Opt-Out customers.

Mr. Coltan requested the "Commission Order PG&E to make available to Mr. Coltan a non-analog, non-communicating (i.e. non-smart) digital meter for the same fees charged to Opt-Out customers pursuant to D.12-02-014."⁴²

Mr. Coltan also requested the "Commission order PG&E to reimburse Mr. Coltan an amount to be proven during hearings, but based on the electricity charges he has paid since August, 2017 when his solar system was approved by Mendocino County and deemed ready for interconnection with PG&E."⁴³ Finally, Mr. Coltan requested the Commission order PG&E to keep Mr. Coltan's interconnection application open during the pendency of the complaint.⁴⁴

We granted Mr. Coltan's complaint according to Rule 4.1(a), whereby any person, in this case Mr. Coltan, may assert a violation of any law, order or rule of the Commission. Since the case was brought according to Rule 4.1(a), the proceeding did not include the reasonableness review of rates. We disagree with Mr. Coltan that the customer-wide review of meter options for Smart Meter Opt-Out NEM 2 customers would not implicate the reasonableness of customer rates. Based on the allegations in Mr. Coltan's complaint, the Commission could either find that PG&E did or did not commit a violation, not engage in consideration of the reasonableness of theoretical meter type offerings for

⁴² Amended Complaint at 10 (#57), 12 (#69) and (#78(a)).

⁴³ Amended Complaint at 10 (#58), 12 (# 58) and 14 (# g).

⁴⁴ Amended Complaint at 10 (#59).

PG&E's, or any other utility's, Smart Meter Opt-Out customers. Any finding that PG&E's actions against Mr. Coltan violated any law, rule or order of the Commission would result in an outcome for Mr. Coltan as an individual.

Mr. Coltan first asserted his interest in representing a broader class of customers when he filed a Notice of Intent in the proceeding. Mr. Coltan's Notice of Intent included seven declarations from customers that expressed disapproval of PG&E's meter options for Smart-Meter Opt-Out customers. As the ALJ Ruling denying Mr. Coltan's NOI correctly observed, none of the declarants joined the proceeding as a party or authorized Mr. Coltan to represent their interests.⁴⁵ The Utility Reform Network (TURN) motioned for party status on the assumption that the scope of the proceeding met Rule 4.1(b) requirements, and their motion for party status was rejected as improperly expanding the scope of the proceeding.⁴⁶

When considering the eligibility of parties for intervenor compensation in a complaint case, the Commission found "the instruction to complainants in D.95-10-050 (*Grinstead v. PG&E*) sufficient guidance on the eligibility for intervenor funding for complaint actions."⁴⁷ Therefore, is no legal error in the ALJ Ruling Rejecting Mr. Coltan's NOI to Claim Intervenor Compensation for failure to review cases subsequent to *Grinstead*.

We nevertheless find review *Ortega* and find it distinguishable from Mr. Coltan's NOI claim. In *Ortega*, the Commission consolidated two cases challenging rate increases for pay phone calls resulting from approval of AL 254. Mr. Ortega filed complaint Case (C.) 92-08-031, alleging the rate increase was

⁴⁵ ALJ's Ruling Rejecting Michael Coltan's NOI to Claim Intervenor Compensation at 11-13.

⁴⁶ ALJ Ruling Denying TURN's Motion for Party Status Upon Reconsideration.

⁴⁷ D.98-04-059 at 83 (Findings of Fact 9).

improper because 1) AL 254 was an improper means of instituting rate changes and 2) AL 254 was defective.⁴⁸ Around the same time, the Centro Legal de la Raza filed complaint C.92-09-009, alleging increases from AL 254 discriminated against persons using coins to place long distance calls.⁴⁹ The Commission consolidated C.92-08-031 and C.92-09-009, and additional parties intervened.

The Commission ultimately found the rate changes implemented by AL 254 were unlawful and awarded Mr. Ortega intervenor compensation for significant contribution to the consolidated proceedings.⁵⁰ The Commission found Mr. Ortega's claim to represent homeless persons making pay phone calls using coins credible, as Mr. Ortega was formerly homeless, and awarded Mr. Ortega intervenor compensation based on substantial contributions as a representative of an otherwise underrepresented group.⁵¹ As distinguished from *Ortega*, Mr. Coltan's Amended Complaint requested relief for his own self-interest, and not a broad class of otherwise underrepresented customers.

10. Assignment of Proceeding

Martha Guzman Aceves is the assigned Commissioner, and Zita Kline is the assigned ALJ and the Presiding Officer in this proceeding.

Findings of Fact

1. Mr. Coltan is a SmartMeter Opt-Out customer and pays \$20/month to participate in PG&E's Opt-Out programs, paying \$10 for each of two meters on his property.

⁴⁸ D.99-12-003 at 2.

⁴⁹ *Id.*

⁵⁰ *See* D.99-12-003 at 2.

⁵¹ D.99-12-003 at 7, 11.

2. Mr. Coltan's existing analog meters are read by a PG&E Meter Maintenance Person or a Routine Meter Person on a bimonthly basis.

3. Mr. Coltan's residence and barn are currently metered using analog meters, which are read on a bimonthly basis by a PG&E Meter Maintenance Person or a Routine Meter Person.

4. Mr. Coltan installed solar panels on his property in July 2017.

5. On August 2, 2017, the County of Mendocino inspected and approved Mr. Coltan's solar system.

6. On August 11, 2017, Mr. Coltan submitted an interconnection application to PG&E to interconnection his residential solar system.

7. On September 14, 2017, PG&E declined to interconnect Mr. Coltan's solar installation on the basis that Mr. Coltan declined the three-meter options offered by PG&E to its NEM 2 customers.

8. The three types of meters PG&E offers to smart-meter Opt-Out customers are 1) a SmartMeter™, 2) a Cellular Network Meter or 3) a Landline Meter.

9. Mr. Coltan's solar installation qualifies for interconnection under PG&E's NEM 2 tariff.

10. Mr. Coltan refused PG&E's offer of a 1) a SmartMeter™, 2) a Cellular Network Meter or 3) a Landline Meter because he considered all three meters to be "smart."

11. Mr. Coltan brought his complaint regarding PG&E's failure to interconnect his residential solar system to the Commission's CAB in 2017.

12. PG&E's NEM 2 tariff requires meters to be capable of measuring data with sufficient regularity to capture time-of-use pricing and assess non-bypassable charges.

13. PG&E's E-SOP tariff allows an Opt-Out option of a non-communicating, solid state, digital time-of-use meter.

14. Mr. Coltan's solar installation meets the requirements for the NEM 2 tariff.

15. PG&E uses a meter reader to read analog meters, which requires only observation of the meter number on the outside of the meter.

16. PG&E uses a Metering Systems Technician to physically download information from NEM 2 compatible meters.

Conclusions of Law

1. Defendant's NEM 2 requirements are governed by the NEM 2 tariff.

2. Defendant's Smart Meter Opt-Out requirements are governed by its E-SOP tariff.

3. Defendant must strictly adhere to its tariffs.

4. For the purpose of determining meter eligibility for Mr. Coltan's residential solar system under PG&E's E-SOP tariff, the term "non-communicating" refers to a meter that does not communicate with PG&E's wireless Smart Meter radio frequency system.

5. Defendant's NEM 2 tariff is silent with regard to the make and model of meters to be used.

6. The Cellular Network Meter and the Landline Meter offered to Mr. Coltan as a customer generator under the NEM 2 tariff do not violate PG&E's E-SOP tariff.

7. To contest the reasonableness of any utility rate or charge, Complainants must follow Pub. Util. Code § 1702 and Rule 4.1(b) of the Commission's Rules of Practice and Procedure.

8. This complaint should be denied.

ORDER

IT IS ORDERED that:

1. The complaint of Mr. Coltan is denied.
2. Case 18-02-003 is closed.

This order is effective today.

Dated November 7, 2019, at San Francisco, California.

MARYBEL BATJER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners